

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION

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IN RE:

Chapter 13

CHERRY FRANCIS

Case No.: 19-43235(CEC)

Debtor.

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GUSTAVIA HOME, LLC,

Adv. Proc. No. 19-01097(CEC)

Plaintiff,

-against-

DEUTSCHE BANK NATIONAL TRUST  
COMPANY AS TRUSTEE UNDER THE  
POOLING AND SERVICING AGREEMENT  
RELATED TO IMPAC SECURED ASSETS  
CORP., MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES 2006-3,

Defendants.

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**PLAINTIFF’S STATEMENT OF MATERIAL FACTS PURSUANT TO  
E.D.N.Y. BANKRUPTCY LOCAL RULE 7056-1**

Pursuant to E.D.N.Y. Bankruptcy Local Rule 7056-1, Plaintiff Gustavia Home, LLC (“Plaintiff” or “Gustavia”) submits the following statement of undisputed material facts upon which there is no genuine issue to be tried in connection with its motion for summary judgment against defendant Deutsche Bank National Trust Company As Trustee Under The Pooling And Servicing Agreement Related To Impac Secured Assets Corp., Mortgage Pass-Through Certificates Series 2006-3 (“Defendant” or “DBNTC”) for Unjust Enrichment and the subordination of the DBNTC Mortgage:

1. On August 25, 2006, Debtor executed a mortgage (the “Gustavia Mortgage”) in favor of Mortgage Electronic Registration Systems, Inc. (“MERS”) as Nominee for Impac Funding Corporation (the “Lender”), encumbering the property located at 11545 155 Street, Jamaica, NY 11434 (the “Property”). *See* Weinberg Declaration, **Exhibit A** and ¶ 4.

2. On December 6, 2006, the Gustavia Mortgage was recorded in the Office of the City Register For The City of New York under CRFN 2006000670883. *See* Weinberg Declaration, **Exhibit A** and ¶ 5. The Gustavia Mortgage secures a promissory note (the “Gustavia Note”) in the original principal amount of Ninety Nine Thousand Dollars and Zero Cents (\$99,000.00), executed by Debtor on August 25, 2006, and delivered to the Lender. *See* Weinberg Declaration, **Exhibit B** and ¶ 5.

3. The Gustavia Mortgage and Note were assigned through Assignments of Mortgage and endorsements upon the promissory Note to Gustavia. The endorsed Gustavia Note was physically delivered to Gustavia on January 7, 2016. *See* Weinberg Declaration, **Exhibit C** and ¶ 6. *See* Weinberg Declaration, **Exhibit D** and ¶ 6.

4. The Debtor and James Francis also executed a mortgage (the “DBNTC Mortgage”) in favor of MERS as Nominee for Lender. *See* Weinberg Declaration, **Exhibit E** and ¶ 7. The DBNTC Mortgage was subsequently assigned to DBNTC. *See* Weinberg Declaration, **Exhibit F** and ¶ 7.

5. Without consent of Gustavia, or its predecessors in interest, BANA on behalf of DBNTC as Trustee, entered into a Consolidation and Modification Agreement (the “CEMA” or the “Loan Modification”) with Debtor that was recorded on May 12, 2014 under CRFN 2014000161332. *See* Weinberg Declaration, **Exhibit G** and ¶ 8. The Loan Modification added \$129,610.44 of “New Money” to the DBNTC Mortgage obligation. *See id.*

6. On May 29, 2019 the Debtor commenced the bankruptcy case identified as *In Re Cherry Francis*, Case No.: 19-43235(CEC) (the “Bankruptcy Case”) by filing a voluntary petition for relief pursuant to Chapter 13, Title 11 of the United States Code with the United States Bankruptcy Court for the Eastern District of New York (the “Court”). *See* Weinberg Declaration ¶ 9.

7. On July 19, 2019, DBNTC through Select Portfolio Servicing, Inc. (“SPS”) filed a proof of claim in the Bankruptcy Case (the “DBNTC Proof of Claim”). *See* Weinberg Declaration, **Exhibit B** and ¶ 10. The DBNTC Proof of Claim lacks a Power of Attorney authorizing SPS to act on behalf of DBNTC. *See* **Exhibit B**. It also fails to include an affidavit of physical possession of the endorsed DBNTC Note. *See id.* DBNTC stated the amount of its secured claim was \$506,560.81. *See id.*

8. Gustavia also filed a proof of claim (the “Gustavia Proof of Claim”) in the Bankruptcy Case. *See* Weinberg Declaration, **Exhibit C** and ¶ 11. Gustavia asserted the amount of its secured claim was \$278,138.04. *See id.*

9. On July 17, 2019, Gustavia filed the complaint in the instant adversary proceeding (the “Adversary Proceeding”). *See* ECF Dkt. No.: 1. In response, DBNTC interposed an answer. *See* ECF Dkt. No.: 2. *See* Weinberg Declaration ¶ 12.

10. On August 21, 2019, former defendant Bank of America, N.A. (“BANA”) filed a motion to dismiss the Adversary Proceeding (the “First Motion to Dismiss”). Gustavia rejected the First Motion to Dismiss and filed the Amended Complaint. *See* Weinberg Declaration, **Exhibit A** and ¶ 13.

11. On September 27, 2019, BANA filed a second motion to dismiss (the “Second Motion to Dismiss”). *See* ECF Dkt. Nos.: 13 – 15.<sup>1</sup> On that same day, DBNTC filed its answer to the Amended Complaint. *See* Weinberg Declaration, **Exhibit D** and ¶ 14.

12. On October 11, 2019, Plaintiff served a Notice to Take A Deposition and its First Set of Requests for Production of Documents upon DBNTC’s counsel. *See* Weinberg Declaration, **Exhibit E** and ¶ 15.

13. On February 27, 2020, this Court issued a scheduling order (the “February Scheduling Order”). *See* ECF Dkt. No.: 24. *See* Weinberg Declaration, **Exhibit F** and ¶ 16.

14. On February 28, 2020, DBNTC served Defendant’s Responses and Objections to Plaintiff’s First Request for Production of Documents (“DBNTC’s First Responses”). *See* Weinberg Declaration, **Exhibit G** and ¶ 17. DBNTC served a supplement to DBNTC’s First Responses (the “Supplement”) via email on March 3, 2020. *See id.*

15. On March 3, 2020, DBNTC filed a letter requesting leave to file a motion for summary judgment. *See* ECF Dkt. No.: 25. Plaintiff opposed this request citing that discovery remained outstanding. *See* ECF Dkt. No.: 26. *See* Weinberg Declaration ¶ 18.

16. Following the April 2, 2020 hearing conducted via telephone because of the COVID-19 pandemic, this Court issued a revised scheduling order (the “Revised Scheduling Order”). *See* Weinberg Declaration, **Exhibit I** and ¶ 19. This Court also issued a Consent Order regarding discovery (the “Consent Order”). *See id.* and **Exhibit J**.

17. On April 22, 2020, the deposition (the “Deposition”) of Patrick Pittman (“Pittman”) a Director of Litigation at Specialized Loan Services, Inc. (“SPS”) was conducted electronically.<sup>2</sup> *See* Weinberg Declaration, **Exhibit K** and ¶ 20 - 21

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<sup>1</sup> Following a hearing, this Court dismissed the Amended Complaint as to BANA. *See* ECF Dkt. Nos.: 19 and 20.

<sup>2</sup> The Deposition was conducted electronically via Zoom because of the COVID-19 Pandemic.

18. During the Deposition, Pittman failed to provide a power of attorney establishing SPS' relationship with the Defendant. *See id.* Pittman also testified that there may be additional documents, which were not produced, concerning the payments allegedly made on behalf of the Defendant concerning the taxes and insurance on the Property. *See id.* The undersigned demanded these documents during the Deposition and sent a supplemental demand on April 24, 2020 (the "Supplemental Demand"). *See* ECF Dkt. No.: 31. *See* Weinberg Declaration, **Exhibit L** and ¶ 21.

19. In the Bankruptcy Case, the debtor filed a Pond Motion on August 19, 2019. *See* Weinberg Declaration, **Exhibit O** and ¶ 22. Gustavia interposed opposition on September 6, 2019. *See id* and **Exhibit P**.

20. Without documentation establishing the payment of taxes an insurance on behalf of DBNTC, it is not possible to ascertain what amounts were added to the Loan and whether those amounts were permitted pursuant to the Deutsche Bank Loan.

Dated: May 13, 2020  
New York, New York

**HASBANI & LIGHT, P.C.**

/s/ Seth D. Weinberg  
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